

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Beaumont, Texas

ENTERGY GULF STATES, INC.<sup>1</sup>

Employer/Petitioner

and

Case No. 16-UC-170

INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, LOCAL  
UNION, 2286

Union

**SUPPLEMENTAL DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>2</sup>, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Petitioner, Entergy Gulf States, Inc., is a Texas corporation engaged in the business of providing electrical power through its various facilities located throughout Louisiana and Texas. In the last twelve months, a representative period, the Employer, in conducting its business operations

---

<sup>1</sup> At the hearing, the petition was amended by the Petitioner to reflect its correct name.

<sup>2</sup> Both the Petitioner and the Union filed briefs which were duly considered.

as described above, derived gross revenues in excess of \$100,000. During this same period, the Employer also purchased and received for use at its Texas facilities, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Texas.<sup>3</sup> I find, therefore, that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization<sup>4</sup> involved in these proceedings claims to represent certain employees of the Employer.

The Petitioner originally filed the instant unit clarification petition on June 22, 1995, seeking to exclude Division Substation Operators (DSOs) from the bargaining unit pursuant to its position that these employees were supervisors within the meaning of Section 2(11) of the Act. A hearing was held on July 11, 1995, and on September 1, 1995, the Regional Director issued a Decision and Order that clarified the bargaining unit to exclude DSOs because these employees were determined to be supervisors within the meaning of Section 2(11) of the Act. The Union filed a request for review of this decision with the National Labor Relations Board on September 21, 1995, and on July 26, 1999, the Board granted the Union's request for review and remanded the proceeding to the Regional Director for further consideration consistent with the Board's decision in *Mississippi Power & Light Co.*, 328 NLRB No. 146 (1999). The hearing was reopened by the Region and additional evidence was received on August 23, 1999.

The Petitioner provides electricity to customers in Southern Louisiana and

---

<sup>3</sup> The parties' post-hearing stipulation with respect to commerce and jurisdiction was received and incorporated into the record.

<sup>4</sup> The parties' post-hearing stipulation regarding the Union's status as a labor organization was received and incorporated into the record.

Southeast Texas. The Union involved in this proceeding was certified as the collective bargaining representative of Petitioner's approximately 2010 production and maintenance employees on June 6, 1969 (Case No. 23-RC-3225). Since that time, the Union and the Petitioner have entered into a series of collective bargaining agreements which have extended over a period of 30 years.<sup>5</sup> A merger affecting the Petitioner (Gulf States Utilities Company) took place on December 31, 1993 and, at that time, Petitioner officially became an operating subsidiary of Entergy Corporation, a public utility servicing Arkansas, Mississippi, and Louisiana.

During early 1999, the Petitioner reorganized various aspects of its operations and, as a result, changed the job titles of DSOs to Operations Coordinators (OCs) and the title of their work location from Distribution Dispatch Centers to Operations Information Centers (OIC). In May 1998, the Petitioner created the position of Lead DSO. This position title was later changed to Lead Operations Coordinator (lead OC) during the 1999 reorganization. Although the record reflects lead OCs are responsible for ensuring that OC shifts are scheduled and covered, the record reflects these leadmen do not have direct supervisory control over other OCs.

After the early 1999 reorganization, dispatch centers which were located in Lafayette, Baton Rouge, and Lake Charles, Louisiana, and in Beaumont, Port Arthur, and Conroe, Texas were consolidated into OICs in Beaumont and Baton Rouge. The hierarchy at the Beaumont and Baton Rouge OICs includes a service manager, one lead OC, and five OCs. Scattered throughout the Petitioner's territory are district substations

---

<sup>5</sup> It is noted that the petition in this matter was filed on June 22, 1995 and the relevant contract at that time expired on June 24, 1995. Although the Board generally refuses to clarify a unit during the term of a collective bargaining agreement, *Wallace-Murray Corp.*, 192 NLRB 1090 (1971), it will entertain a petition filed shortly before the expiration of the contract. *Shop Rite Foods*, 247 NLRB 883 (1980).

which maintain contact with the OICs. Employees assigned to these substations include linemen, servicemen, troubleshooters, engineers, and engineer assistants. These employees report directly to utility foremen and field supervisors who in turn report to network managers who oversee all substation operations.

The Petitioner seeks to clarify the bargaining unit to exclude 10 employees currently classified as OCs and two employees classified as lead OCs. Petitioner contends that all of these individuals are supervisors within the meaning of Section 2(11) of the Act because they responsibly direct the work of other employees, discipline and reward employees, and are required to use independent judgment in performing their duties. The Union objects to the proposed clarification on the grounds that OCs and lead OCs do not have supervisory authority which would warrant their exclusion.

The OCs work at computer stations at the OIC where they spend almost half their time inputting information concerning the status of pending outages and trouble calls obtained from servicemen and troubleshooters in the field. OCs do not have face-to-face contact with field employees and communicate with these employees either by radio, telephone, or facsimile. From their computers, the OCs are capable of monitoring the operation of Petitioner's electrical distribution system using a computerized Supervisory Control and Data Acquisition (SCADA) system and the Automated Mapping/Facilities Management (AM/FM) system. The AM/FM functions as a computer database and facilitates OCs inputting electrical power outage, power line and equipment de-energization (switching), and emergency information which can later be accessed and monitored from other computers by network managers and field supervisors. The AM/FM system is also used by OCs to obtain call out lists from field locations and to

ascertain outage notifications from the phone center. Although most outage situations are transmitted to OCs from the phone center, OCs still receive live calls from local fire, police, and sheriff departments.

When the AM/FM system indicates a failure in the distribution operations such as an outage, the OCs categorize the seriousness of the outage and the time it will take to restore power using an established color code. OCs prioritize incoming outage calls based on the color codes, their experience, and company protocols which factor customer size and location and time restoration requirements. The record reflects that OCs are not consulted when changes are made to these protocols and procedures.

Once an outage is identified, OCs are responsible for contacting field employees to take corrective action and restore the service. After the dispatched employee arrives at the trouble location, he or she communicates back to the OC the status of the situation and advises whether or not he or she can perform the repair or whether additional help is needed. Based on this relayed information, the OC determines whether additional resources will be needed. If additional resources are needed, OCs will notify the OIC supervisor and the field supervisor of the situation.

There are three OCs on duty during the day shift up to 10:00 p.m. and two OCs on duty during the night shift. After normal business hours, OCs are typically the only individuals on duty at an OIC. If there are no field employees on duty or it is after hours, call lists are used by OCs to determine which field employees to contact and dispatch to a trouble call or outage. These call lists are provided to OCs by various departments and districts pursuant to the collective bargaining agreement and many are updated on a weekly basis. During emergencies or extended outages, OCs have authority to retain

field employees to address the situation. Occasionally, OCs will make requests to engineers or field supervisors for assistance from contract employees and these engineers and field supervisors will direct these contract employees to report to the trouble location. Under poor weather conditions, the OIC will “hand over the network” to the local substations and the substations will dispatch their own field personnel to handle any emergency situations that arise.

The record reflects that OCs have no direct control over the work performed by dispatched field employees. OCs, however, are responsible for overall restoration activities and are subject to discipline if the necessary work is not directed for that purpose. The record further reflects that OCs can reassign field personnel from their daily work in cases of emergency but must contact the appropriate field supervisor in non-emergency situations. During major outages, OCs notify field employees and appropriate parties by using automatically dialed 800 numbers or by sending a computer message.

An OC’s duties also include issuing switching orders in response to outage requests. Using the AM/FM system, OCs isolate trouble locations and then design and issue switching orders which provide servicemen with specific instructions regarding which lines must be de-energized by the serviceman so that required maintenance or repair work can be performed in a safe manner. The record reflects that the switching orders that are written and issued by OCs are limited to equipment and lines associated with these same substations and main trunk lines or feeders. OCs prepare these switching orders based on training, experience, and safety manuals. When issuing a switching order, an OC reads or faxes the order to the field employee involved. The field

employee contacts the OC on the radio and reads back the switching procedure received. The field employee is then directed by the OC to execute the order.

If a field employee fails or refuses to properly execute a switching order issued by the OC, the OC will inform that employee's field supervisor of the transgression. The record reflects that field employees will routinely inform OCs whether the information on the switching order is consistent with the actual conditions field employees observe. In such situations, field employees recommend changes to the procedure and switching orders are subsequently revised by the OC to address the newly-relayed information. If a field employee informs the OC that he or she cannot execute the switching order, the OC will contact the on-call supervisor and inform the supervisor that additional line crew or servicemen are needed. The record reflects that servicemen issue their own switching orders in the field for trouble locations that are not specifically derived from substations or feeders.

The record reflects that the OCs do not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, or discipline employees. The record reflects that field supervisors, not OCs, are responsible for any discipline issued to field employees. There is no record evidence that OCs participate in evaluations of employees or effectively recommend that a particular action regarding performance be taken. OCs do not grant sick leave, vacation leave, safety layoffs or rest time to field employees and do not have the authority to grant such leave for themselves.

In *Mississippi Power & Light Co.*, supra, the Board found that dispatchers who received reports on customer problems and subsequently sent on-duty field employees to problem sites did not exercise supervisory authority in their assignments. The Board held

that the extent of the problem and the number of employees that would be needed for a repair was determined by a collaborative decision between the dispatcher and the field employee. These facts are analogous to the interaction OCs have with servicemen who relay actual field conditions and resource needs to OCs. As a result of this collaboration, OCs request additional help from supervision and rely on supervision to obtain the additional personnel needed for the job.

The Board in *Mississippi Power & Light* also noted that the prioritization of work assignments and the determination of whom to call out was governed by well-established procedures, predetermined lists and commonsense considerations not unique to supervisors. In the instant matter, OCs use call lists provided by field locations which determine who will be contacted for dispatch during outages and emergency situations. During off hours, OCs determine resource needs but rely on field supervisors or network managers to assign the necessary field employees. Moreover, OCs do not go out into the field to oversee the field employees' work and do not have any supervisory authority over how these employees perform their repair or maintenance work.

In *Mississippi Power & Light*, the Board also found that the judgment exercised by the dispatchers in selecting or designing switching sequences was a function of the dispatchers' work, training, knowledge, and experience and did not constitute the exercise of independent supervisory authority. Likewise, the Board found that the dispatchers' direction of field employees in the execution of the switching orders did not involve the use of independent judgment and found the mere transmission of these technical decisions did not constitute supervision. In the instant matter, the evidence indicates that OCs follow a procedure for the issuance and the execution of switching

orders pursuant to their training, experience, and safety manuals. Although OCs write and issue switching orders, field employees can and do question OCs regarding the sequences being relayed to them based on their observations in the field. As the Board found in *Mississippi Power & Light*, this back-and-forth communication with field employees entails the routine and clerical relay of complex schemata rather than the exercise of independent judgment.

In its brief, the Petitioner contends that OCs have the authority to discipline and effectively recommend to their superiors that such action be taken towards field employees. Although the record reflects examples of OCs notifying management of performance problems, the record is devoid of any evidence demonstrating the OCs have exercised or recommended discipline be taken against any employee or that management relied solely on any OC recommendation. Likewise, Petitioner contends that OCs have authority to recommend awards for employees pursuant to the Petitioner's "Shining Through" or Impact programs. Again, there is no record evidence demonstrating that OCs have executed this alleged authority or effectively recommended such awards.

In its brief, the Petitioner references documents distributed by management to OCs and lead OCs which address OC supervisory responsibilities. Although Petitioner asserts that these letters reaffirm the OCs' possession of disciplinary authority over employees in the field during restoration efforts, there is no record evidence that OCs and lead OCs have exercised such authority. It is further noted that these documents were not distributed to employees until a week prior to the August 23, 1999 hearing and the duties described therein are contrary to much of the testimony in the record. It is well established that theoretical or "paper power" will not suffice to make an individual a

supervisor. *NLRB v. Security Guard Services*, 384 F. 2d. 143, 149 (5<sup>th</sup> Cir. 1967).

For the foregoing reasons, I find that OCs and lead OCs are similar to the distribution and system dispatchers in *Mississippi Power & Light*, and are therefore, not supervisors within the meaning of Section 2(11) of the Act. Field employees report to immediate supervisors for their daily work activities and the type of interaction that field employees do have with OCs and lead OCs has been found by the Board to be insufficient to establish statutory supervisory authority. Under these circumstances, OCs, as the dispatchers in *Mississippi Power & Light*, do not responsibly direct work or possess supervisory independent judgment. For the foregoing reasons, I find it inappropriate to exclude OCs and lead OCs from the bargaining unit.

#### **ORDER<sup>6</sup>**

**IT IS HEREBY ORDERED** that the petition be clarified to include OCs and lead OCs in the bargaining unit.

**DATED** this September 29, 1999, at Fort Worth, Texas.

/s/ Martha Kinard  
Martha Kinard  
Acting Regional Director, Region 16  
National Labor Relations Board  
819 Taylor Street, Room 8A24  
Federal Office Building  
Fort Worth, Texas 76102

440-8350-6750-6700

---

<sup>6</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, as amended, a request for review of this Decision may be filed with the Executive Secretary of the National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. In order to be considered timely, this request must be received by the Board in Washington, DC, by October 13, 1999.